

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Expedited Package Services 3 (MC2010-28)
Negotiated Service Agreement

Docket No. CP2017-46

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING ADDITIONAL
GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(November 30, 2016)

The Public Representative hereby provides comments pursuant to Commission's Notice initiating this docket.¹ In that Notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice of filing an additional Global Expedited Package Services (GEPS) 3 agreement (Agreement).²

The Postal Service's Notice includes a public (redacted) version of the Agreement, a certified statement of compliance required by 39 CFR 3015(c)(2), and a public version of Governors' Decision No. 08-7. The Postal Service also filed under seal the full (unredacted) text of the Agreement, Governor's Decision No. 08-7 and a supporting financial model estimating the contract value.

Background. Agreements within the GEPS 3 product offer incentive pricing to mailers that send items to foreign destinations using Priority Mail Express International (PMEI) or Priority Mail International (PMI). Notice at 4. Prices offered pursuant to an agreement may differ from mailer to mailer depending upon the volume or postage

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, November 28, 2016.

² Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, November 23, 2016 (Notice).

commitments made by such mailers. *Id.* To qualify for an agreement, a mailer “must be capable, on an annualized basis, of paying at least \$200,000 in international postage to the Postal Service.”³

Prices and classifications not “of general applicability” for GEPS agreements were previously established by Governors’ Decision No. 08-7.⁴ In Order No. 86, the Commission established GEPS as a product on the competitive product list.⁵ The Commission subsequently approved the addition of the GEPS 3 product to the competitive product list (MC2010-28), and included within that product a GEPS 3 agreement (CP2010-71), which would serve as the baseline agreement for functional equivalence comparisons with future agreements.⁶ Since the addition of the GEPS 3 product to the competitive product list, the Commission has determined that many additional GEPS 3 agreements were functionally equivalent to the baseline agreement and should be included in the GEPS 3 product (MC2010-28).

The intended effective date of the Agreement is December 15, 2016. Notice at 3. The Agreement is to remain in effect for one calendar year from the effective date, or the last day of the month which falls one calendar year from the effective date, unless terminated sooner. *Id.*, Attachment 1 at 3 (Article 11). The instant Agreement is with a new mailer.

The Postal Service states that the Agreement is functionally equivalent to the baseline agreement and is in compliance with the requirements of 39 USC 3633. Notice at 7. The Postal Service therefore states that the Agreement “should be added to the GEPS 3 product grouping.” *Id.*

³ Notice of the United States Postal Service of Minor Classification Change, Docket No. MC2012-8, January 30, 2012, at 3, showing conforming changes to the Mail Classification Schedule, 2510.3.1.

⁴ See United States Postal Service Notice of Filing Redacted Copy of Governors’ Decision No. 08-7, Docket No. CP2008-5, July 23, 2008.

⁵ See PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, Docket No. CP2008-5, June 27, 2008.

⁶ See PRC Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, Docket Nos. MC2010-28 and CP2010-71, July 29, 2010.

COMMENTS

The Public Representative has reviewed the Postal Service's Notice, the Agreement, and supporting financial model filed under seal accompanying the Notice. Based upon that review, the Public Representative concludes that the Agreement is functionally equivalent to the baseline agreement. In addition, the negotiated prices in the Agreement should generate sufficient revenues to cover costs and thereby satisfy the requirements of 39 USC 3633.

Functional Equivalence. The Postal Service asserts that the Agreement "shares similar cost and market characteristics . . . [and the] functional terms of the contract at issue are the same as those of the contract that is the subject of Docket No. CP2010-71, which serves as the baseline agreement for the GEPS 3 product grouping." *Id.* at 4. In this regard, the Postal Service identifies a number of differences between the Agreement and the GEPS 3 baseline agreement. *Id.* at 4-7. Most of these differences consist of changes to contract terms that affect certain obligations of the mailer and are similar to those included in other recent GEPS 3 agreements, or are specific to the mailer (*i.e.*, mailer name, address, and identification of mailer's representative to receive notice).⁷ The Postal Service maintains that these specified differences do not affect either the fundamental service the Postal Service is offering or the fundamental structure of the Agreement. *Id.* at 7.

The Public Representative's review of the financial model reveals that the Agreement features similar cost and market characteristics to the baseline agreement as both agreements involve the PMEI and/or PMI shipping services. Therefore, the Public Representative concludes that the Agreement is functionally equivalent to the baseline agreement and should be added to the GEPS 3 product.

39 USC 3633. Pursuant to 39 USC 3633(a), the Postal Service's competitive prices must ensure that each competitive product will cover its attributable costs; ensure that all competitive products collectively contribute an appropriate share of the

⁷ Compare Docket No. CP2015-78, Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 27, 2015, at 4-7.

institutional costs of the Postal Service; and, not result in the subsidization of competitive products by market dominant products.

The Postal Service's financial model does not directly address whether the addition of the Agreement to the GEPS 3 product will result in the product as a whole covering costs as required by 39 USC 3633(a)(2). However, the financial model does indicate that the negotiated rates in the Agreement will generate sufficient revenues to cover its attributable costs. The Public Representative notes that in the FY 2015 Annual Compliance Determination (ACD) Report, the Commission determined that the GEPS 3 product covered costs. 2015 ACD at 89. Therefore, the addition of the Agreement to the GEPS 3 product should not cause the product's cost coverage to fall below 100 percent. As a result, the addition of the Agreement to the GEPS 3 product should allow the product to continue to comply with 39 USC 3633(a)(2), and should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 USC 3633(a)(1). Moreover, the GEPS 3 product should improve the likelihood that competitive products as a whole contribute an appropriate share to the Postal Service's institutional costs, consistent with 39 USC 3633(a)(3).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

Max E. Schnidman
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6825
Max.schnidman@prc.gov